

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Protecting and Promoting the Open Internet) GN Docket No. 14-28
)
)

To: the Commission

**COMMENTS OF
NATIONAL PUBLIC RADIO, INC.**

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Summary

With the Internet evolving as the defining communications medium of the Twenty-First Century, NPR endorses the establishment of a basic framework to ensure that it remains truly open. The Commission is correct to focus on assuring access by edge providers and end users to the Internet free from manipulation by broadband Internet service providers ("ISPs") motivated to promote their economic self-interest in ways contrary to an open Internet. Having properly identified both the significance of the open Internet as an engine of innovation and the principal threat to its continued positive evolution, the Commission's proposal to allow broadband ISPs to profit by manipulating Internet access is profoundly mistaken. Indeed, allowing "paid priority" access to the Internet directly threatens the public service mission of NPR, other public radio producers and distributors, public radio stations, and other public media edge providers.

NPR, its Member stations, and public radio as a whole are charged with providing news, information, and cultural content and services to the American people by whatever electronic means of communication on which they rely. We have been given this charge by Federal policy makers because of an inherent void for compelling, broadly educational content unfilled by commercial media. Authorizing broadband ISPs to charge for "preferred access" above and beyond the telecommunications costs involved would pose a substantial obstacle to the continued offering of new and innovative public media services because public media cannot possibly compete with commercial providers for preferred access. Such a policy would also limit the choices available to end users to those determined by a relatively small number of broadband ISPs. Such a policy, in short, would fundamentally change the Internet as it now exists and undermine public radio's continued robust presence in the daily lives of the American public.

NPR therefore urges the Commission to reconsider its "paid prioritization" proposal and to reaffirm an unmistakably clear commitment to protecting and promoting an open Internet.

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**COMMENTS OF
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Introduction

National Public Radio, Inc. ("NPR") hereby responds to the Notice of Proposed Rulemaking in the above-captioned proceeding seeking comment on how to preserve an open Internet.¹

NPR is a non-profit membership corporation that produces and distributes noncommercial educational ("NCE") programming through more than 1000 public radio stations nationwide. In addition to broadcasting award winning NPR programming, including All Things Considered[®] and Morning Edition[®], NPR Member stations are themselves significant program producers and community institutions. NPR also operates the Public Radio Satellite System ("PRSS"), provides a variety of digital services to its Members, and represents their collective interests in public policy matters.

¹ Protecting and Promoting the Open Internet, Notice of Proposed Rulemaking, GN Docket No. 14-28 (rel. May 15, 2014) [hereinafter "NPRM"].

Discussion

I. **An Open Internet Is Essential To Current And Future Public Media Services**

The public radio system in the United States comprises a broad range of non-commercial radio stations, producers, and distributors whose mission is to provide educational and culturally enriching programming to the American public – programming which would not otherwise be made available by commercial entities.² Public radio accomplishes this goal by creating a unique mix of programming that reflects the rich diversity of the American population and the world. At a time when the cultural, economic, and political traditions of the nation are facing tremendous change, public radio – where the starting point is excellence, not commercialism – is a critical public service for the American people.

Public broadcasting was created with two missions in mind – one focused on programming services, the other focused on using technology to advance education. In establishing a comprehensive Federal policy in support of public broadcasting, the nation's policy makers realized that radio and television were powerful means of communication.³ Even so, Congress long ago broadened the scope of Federal support for public broadcasting to encompass virtually any electronic means of "transmitting, emitting, storing, and receiving images and sounds, or intelligence" constituting noncommercial educational and cultural

² The Commission has long recognized the fundamentally different nature of public broadcasting: "Thus, the very definition of the service, the status of its operating stations, and its essentially non-profit, noncommercial programming nature make public broadcasting stations very different in programming terms, from their commercial counterparts." In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, Report and Order, 98 F.C.C.2d 746, at 751 (1984).

³ See Public Broadcasting Act of 1967, P.L. 90-129, 76 Stat. 65.

programming.⁴ Public radio is therefore entrusted with and committed to using any available distribution medium, whether broadcast, satellite, the Internet, or other digital platforms, for educational purposes.

To achieve its public service mission, public media depends on an open Internet. NPR, its Member stations, and other public radio producers and distributors have provided direct and free access to public media content via the Internet since the mid-1990s. More recently and increasingly, public radio offers access to its public service via mobile devices as well. NPR.org offers streaming audio and video as well as articles, blogs, multimedia, downloadable podcasts, music and interactive forums. Mobile applications for the iPhone, BlackBerry, Android, iPad, and other web-enabled devices have been deployed to facilitate access to public media content. These newly deployed tools are helping to increase mobile access to public radio content and services at a rapidly increasing rate.

Access to and use of NPR's digital platforms and services (including NPR.org, m.NPR.org, iPhone News, iPad News, iPhone Music, iPad Music and Android Music) is rapidly expanding. Between January and June of this year, for example, NPR experienced a 54 percent increase in mobile sessions across NPR digital platforms and a 46 percent increase in access via PC-based Internet access. As of November 2013, mobile access actually overtook desktop use, comprising 60 percent of all sessions by June 2014.

The latest mobile innovation will be released this summer: a brand new digital listening app called **NPR One**. NPR One will blend NPR and Member Station news reporting in a rich, localized experience. The app will be enabled with digital capabilities that customize to the user. NPR One represents a public radio collaborative effort to build a transformative digital listening

⁴ See Public Telecommunications Financing Act of 1978, P.L. 95-567, 92 Stat. 2405, § 401 (codified at 47 U.S.C. § 397).

platform that will make public radio content available wherever people may want to access it. It is a new way of listening to public radio – responsive to the listener’s tastes and routines.

NPR Member stations and other public media content providers have taken an equally active role in offering their own unique content via the Internet and mobile apps to create a more accessible and personalized listening experience. Following are just a few of the web-based platforms and mobile apps our member stations are developing or currently employ:

- **New York Public Radio:** The WNYC app allows listeners to submit music requests across the classical stations as well as offering extensive podcast and video content. The newly released “discover feature” uses technology to build custom playlists for public radio listeners based on interests and the amount of time they wish to listen. These playlists will feature a wide range of local and national content from the leading public radio producers, including NPR, APM and PRI.⁵
- **The Takeaway:** As a co-production of WNYC and PRI, in collaboration with BBC, NY Times Radio and WGBH, the Takeaway is show that encourages audience participation via its unique app that allows users to submit videos, audio and images directly from their phones to the program’s producers.⁶
- **Connecticut Public Broadcasting:** The Connecticut Public Broadcasting Network (CPBN) is working to provide free educational apps to families in underserved communities. In addition to CPBN, PBS stations and Head Start centers nationwide are participating in this unique outreach effort under the Ready to Learn Initiative funded by the U.S. Department of Education. The effort not only serves to increase access to educational mobile content for children and low income families, but to extend the role of CPBN as a valued educational resource in the Hartford community.⁷
- **Northwest Public Radio:** In conjunction with a growing bilingual reporting initiative, NWPR is developing a complementary app that allows users to both read and listen to local programming in both English and Spanish.⁸

⁵ <http://www.wnyc.org/mobile>.

⁶ <http://www.thetakeaway.org/iphone>.

⁷ <http://www.cpbn.org/ruckus-cptvkids-app>.

⁸ <http://www.nwpr.org>.

- **KCRW:** The KCRW app streams three KCRW channels with on-air, music and news programming. Music shows include real-time track lists for each. The app also features event information about music, news and arts and culture in California.⁹
- **KERA:** The KERA Mobile App allows individuals to listen to KERA live, pause and rewind live audio for two radio streams at once. The app also makes it easy to search hundreds of stations and websites for specific content and to share favorite stories with friends. The app also includes a built-in sleep timer and alarm clock which can be programmed to feature an individual's favorite station when they fall asleep and wake up.¹⁰
- **Nashville Public Radio:** With the WPLN app, listeners can enjoy any of Nashville Public Radio's broadcast channels, including news and talk services from various stations. The app also enables listeners to engage with the station via social media and includes an "open mic" feature which provides a platform for easily sending voice recorded messages to the station.¹¹
- **WXXI :** WXXI received a grant to develop and roll out a mobile app to streamline aggregation of user-generated content. The goal is to broaden audience engagement, primarily with younger and under-represented community members. The app will be available in both English and Spanish, and WXXI is working with a consortium of local community media and educational partners. The app will enable the integration of user-generated content into content streams of regional news.¹²
- **Vermont Public Radio:** The VPR app features live audio streams of classical, jazz and news related content. The app is of great value to the local community, as it focuses on local content including Vermont legislative streams, news and weather information.¹³

⁹ <http://www.kcrw.com/about/kcrw-mobile-applications>.

¹⁰ <http://www.kera.org/radio/app>.

¹¹ <http://nashvillepublicradio.org/mobile>.

¹² <http://interactive.wxxi.org/mobile>.

¹³ <http://digital.vpr.net/online-streams>.

- **Minnesota Public Radio:** The customizable MPR app allows users to curate the news content they receive, including headlines, stories, photo galleries, breaking news and weather forecasts.¹⁴

NPR and other key producers and distributors of public radio programming, including American Public Media (APM), Public Radio International (PRI) and Public Radio Exchange (PRX), have also partnered to form the **Public Media Platform** (PMP) to distribute digital content (audio, video, text and images) from multiple public media entities across a variety of web and mobile platforms. This groundbreaking collaboration provides the industry's first ever cross-media digital distribution system, with the ultimate goal of bringing public media to an even larger audience. Realizing public media's full potential requires a strategic investment in an open information architecture that harnesses the collective power of public media, while encouraging continued innovation by individual producers. This initiative represents a giant step towards the creation and deployment of a new distribution platform to serve the changing and expanding news and information needs of the American public.¹⁵ The principle of openness is an extension of the standards of free and universal access that rest at the heart of public radio's public service commitment.

As the Commission develops policies to promote an open Internet and the innovation it has spawned, therefore, it is vital that the public retains the flexibility they currently enjoy to access the valuable content they desire on their terms and through whatever technology best fits their needs. Access to all of these platforms, from terrestrial radio and satellite broadcasts to online and mobile streaming, requires maintaining a truly open Internet.

¹⁴ <http://minnesota.publicradio.org/about/site/mobile>.

¹⁵ <http://publicmediaplatform.org/about>.

II. Beyond The Reasonable Cost Of Providing Telecommunications To Edge Providers So They Can Offer Services To The Public, Allowing Broadband Providers To Charge Edge Providers For Priority Access Threatens The "Virtuous Circle Of Innovation" That Has Characterized The Internet And Is Fundamentally Inconsistent With An Open Internet Policy

In establishing the public policy objective of protecting and promoting the open internet, the NPRM properly focuses on what it previously described as a "virtuous circle of innovation in which new uses of the network -- including new content, applications, services, and devices -- lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses."¹⁶ As the public becomes ever more reliant on the Internet, it becomes commensurately more important to protect against conduct that threatens this cycle of innovation. Practices of broadband internet service providers ("ISPs") -- the principal focus of this proceeding -- represent one category of threat, but it is by no means the only one.¹⁷

The Open Internet Order properly assessed the economic incentive broadband ISPs possess to pursue practices in their individual self interest that, collectively, threaten an open Internet. Thus, broadband ISPs have economic incentives to block or disadvantage a particular edge provider or class of edge providers, to increase revenues by charging edge providers for access or priority access to the public, and to neglect non-prioritized providers and Internet traffic.¹⁸ Recognizing that these threats are even more important today because of the

¹⁶ NPRM at ¶ 26 (quoting Preserving the Open Internet, Report and Order, 25 FCC Rcd. 17905, 17910 (2010) [hereinafter "Open Internet Order"], aff'd in part, vacated and remanded in part sub nom. Verizon v. FCC, 740 F.3d 623 (D.C. Cir. 2014).

¹⁷ Copyright piracy represents another significant threat because it may ultimately discourage existing and new uses of the Internet.

¹⁸ Open Internet Order, 25 FCC Rcd. at 17919-22.

continually increasing role of the Internet in American life,¹⁹ the NPRM proposes to reinstate the "no-blocking" rule adopted in the Open Internet Order, but inexplicably with an exception that essentially eviscerates the rule, allowing individualized bargaining above a minimum level of access to a broadband provider's subscribers.

While a broadband ISP may seek to block completely a particular edge provider or class of such providers, such occurrences are likely to be narrow and rare. Far more likely to harm an open Internet would be a policy allowing broadband ISPs to establish categories of preferred edge providers based on the ability of highly profitable commercial enterprises to pay for preferred access. Such a policy threatens an open Internet in two ways.

First, under-resourced edge providers, including most public media entities, would be unable to compete with well-heeled commercial enterprises for preferred access. Allowing broadband ISPs to exact payment as the price of meaningful access would divert scarce resources away from the creation of the kinds of in-depth and compelling content and user experiences for which public media has long served an essential role. Indeed, giving broadband ISPs such control over access to their end-users would significantly impair the ability of public radio content and technology creators to pursue their public service mission contrary to Congress's expressed vision.

Second, the end-user's access to Internet-enabled content and services would be unduly influenced by their broadband ISP. NPR therefore shares the concerns cited in the NPRM that "[p]rioritized delivery to end users, if allowed, will favor those content, application and service providers who can pay for it . . . [and] significantly disadvantage libraries, education, and other

¹⁹ NPRM at ¶ 7.

non-profit institutions"²⁰ -- all to the public's detriment. Broadband ISPs may dispute the pernicious affect of such "pay-to-play" arrangements, but there can be no denying that such a policy would represent a fundamental change in the nature of Internet access for end users and edge providers alike.

By allowing ISPs to demand payment as a condition for achieving "priority" access to end users, the policy would also require the Commission to engage in the difficult task of defining a "minimum level of access" below which the access would be deemed to have been blocked.²¹ Indeed, the complexity of the undertaking is reflected in the broad range of issues raised in the NPRM itself.²² Given the rapid evolution of technology, defining a "minimum level of service" by regulatory fiat would likely become an ongoing undertaking rife with disputes, invariably resulting in repeated judicial intervention. Finally, the courts may well consider such a minimum level of service as inconsistent with classifying broadband access service as an information service rather than a telecommunications offering subject to Title II common carrier regulation to the extent it would require broadband ISPs to offer at least a minimum level of telecommunications indiscriminately to the public on just and non-discriminatory terms.²³

For similar reasons, permitting paid prioritization while attempting to police the commercial reasonableness of such pricing practices on a case-by-case basis is likely doomed to

²⁰ Id. at ¶ 121 n.250, citing Letter from Emily Sheketoff, ALA, Prudence Adler, ARL, and Diana Obligner, EDUCAUSE, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 14-28, at 2 (filed Feb. 13, 2014).

²¹ Id. at ¶ 89.

²² See id. at ¶¶ 100-04.

²³ The offering of telecommunications in such a fashion is the hallmark of Title II regulation. See 47 U.S.C. §§ 201-202; NPRM at ¶ 150 & n.306.

failure.²⁴ The Internet continues to evolve rapidly, and attempting to manage interactions among broadband providers, edge providers, and end users cannot possibly keep pace. Even considering such objective factors as whether a broadband ISP and edge provider are vertically integrated²⁵ or incorporating a system of rebuttable presumptions²⁶ would be of limited utility in assessing such malleable concepts as the impact of a given marketing practice on consumers, speech and civic engagement and whether the parties involved had engaged in good faith negotiations. Even enlisting the Commission to resolve a disputed practice would require a substantial commitment of time and resources that many public media entities and other edge providers could ill-afford.

On the other hand, barring paid prioritization would not discourage broadband ISPs from investing in broadband infrastructure. The "virtuous circle of innovation" that characterizes an open Internet encourages broadband internet investment simply by promoting end user and edge provider demand for access to broadband facilities, not by manipulating broadband access to secure additional profits. With a bar to paid prioritization, there is no suggestion that broadband ISPs would be prohibited from recouping their costs plus profits subject to normal competitive forces that otherwise constrain pricing. Nor should broadband providers be expected to offer the same pricing, terms and conditions to edge providers seeking materially different interconnection facilities, such a T1 line versus simple cable modem access. What should be prohibited is charging edge providers seeking comparable access different amounts based on the ability and willingness of better resourced providers to pay more.

²⁴ See NPRM at ¶¶ 122-32.

²⁵ Id. at ¶ 126.

²⁶ Id. at ¶ 128.

Finally, the Commission should apply the same prohibition to fixed and mobile broadband access. Accessing Internet-enabled content, services, and applications via mobile Internet connections will soon surpass fixed broadband access, if it has not already.²⁷ Mobile paid prioritization may be equally harmful to an open Internet, and connection speed is not the only way broadband providers can manipulate the market. Data caps and sponsored services for commercial edge providers who can afford to pay for such prioritization discourages consumers from using their mobile devices to access the vital content provided by public radio via websites and apps. To the extent mobile and broadband Internet access may involve different network management requirements, those differences should not justify paid prioritization for edge providers to offer content, services, or applications to end users.

²⁷ See Pricewaterhouse Coopers, PwC 17th Annual Global CEO Survey 2014, available at <http://www.pwc.com/gx/en/global-entertainment-media-outlook/segment-insights/internet-access.jhtml>.

Conclusion

For the foregoing reasons, NPR urges the Commission to preserve an open Internet and the ability of public radio producers, distributors, and stations to pursue its collective public service mission by prohibiting broadband ISPs from pursuing paid prioritization arrangements.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.

A handwritten signature in black ink, appearing to read "Jonathan D. Hart". The signature is written in a cursive style with a large initial "J".

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